The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ERLAND CASSEL and JAN CASSEL

Appeal No. 2005-0425
Application No. 09/887,144

ON BRIEF

Before THOMAS, BLANKENSHIP, and MACDONALD, Administrative Patent Judges.

THOMAS, Administrative Patent Judge.

DECISION ON APPEAL

Appellants have appealed to the Board from the examiner's final rejection of claims 17 through 21, 25, 26 and 30 through 32.

Independent claim 17 is reproduced below:

> 17. An antenna for a portable communication apparatus, the antenna comprising a radiator having a first end to be connected to radio circuitry in the portable communication apparatus, and a second end, a feedback conductor having a first end, which is electrically connected to the second end of the radiator, the feedback conductor extending along the radiator in a first direction from the second end of the

radiator towards the first end of the radiator, wherein the feedback conductor includes a second end, extending along the radiator in a second direction towards the second end of the radiator, for tuning a frequency range of the antenna.

The following reference is relied on by the examiner:

Kenoun et al. (Kenoun) 6,275,198 Aug. 14, 2001 (filed Jan. 11, 2000)

Claims 17 through 21, 25, 26 and 30 through 32 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Kenoun.

Rather than repeat the positions of the appellants and the examiner, reference is made to the brief and reply brief for appellants' positions, and to the answer for the examiner's positions.

OPINION

For the reasons set forth by the examiner in the answer, we sustain the rejection of claims 17, 25, 26 and 30 through 32, but reverse the rejection of claims 18 through 21.

Appellants' principal brief on appeal essentially groups most of the claims on appeal with independent claim 17 (including independent claim 30) as a first stated group and dependent claim 18 as representative of claims 18 through 21 in a second stated group. Arguments are presented only as to claims 17 and 18.

The showing and corresponding discussion in Kenoun's figure 3 clearly provides sufficient evidence to show anticipation of

the subject matter of independent claim 17 on appeal but, on the other hand, does not show evidence of anticipation as to dependent claim 18, which will be explained later. The showing in figure 3 of Kenoun is consistent with appellants' disclosed contribution in the art in figures 3 through 5. It is believed that the subject matter of independent claim 17 is intended to read upon all three of these representative embodiments.

The discussion of Kenoun's figure 3 begins at column 3, line 65. The bulk of the discussion at column 4 clearly illustrates the correctness of the examiner's position and the incorrectness of appellants' arguments set forth in the principal brief on appeal as to claim 17 on appeal.

The examiner's basic view in the answer, which is contested beginning at the bottom of page 8 of the principal brief, is that the second end 64, the labeled offset region 64 in Kenoun's figure 3, does tune the frequency range of the antenna. At least the discussion in Kenoun beginning at column 4, line 18 clearly teaches that the dimensions and geometry of the antenna wire 50's sections or segments 56, 58 and 62 may be varied or otherwise adjusted to achieve not only two or more resonant frequencies, but also to tune the essential bandwidth with respect to each resonant frequency range tuned. Thus, the artisan would well

appreciate that both the frequency range and the bandwidth of Kenoun's antenna, and the three major segments 56, 58 and 62, permit "tuning a frequency range of the antenna" as set forth in the last line of claim 17 on appeal, notwithstanding appellants' arguments to the contrary beginning at page 9 of the principal brief on appeal.

The examiner's responsive arguments beginning at the bottom of page 5 make clear that the examiner considers the teaching value of column 4 of Kenoun as teaching the variability or tune-ability of the bandwidth itself. The remaining parts of the responsive arguments in the answer focus upon argued but unclaimed, yet disclosed features. Appellants' attempt to urge us to read disclosed but unclaimed features into the subject matter of claim 17 on appeal is rejected. It is noted that claim 17 clearly does not require the adjustment of the "resonant" frequencies as urged at the top of page 11 of the principal brief, even though the earlier-noted discussion of column 4 of Kenoun does teach this. The reply brief does not traverse the examiner's responsive arguments in the answer as to claim 17.

Appellants' second principal argument beginning at page 12 of the brief is also misplaced. The first of the positions set forth here is that Kenoun does not disclose that the

conductor 58 provides feedback. In contrast to this urging, claim 17 on appeal does not recite a stated function of feedback per se. All that is claimed is that there is a labeled "feedback conductor," which conductor is clearly comparable to at least segment 58 in Kenoun's figure 3, which also compares with appellants' showings in figures 3 through 5 of the disclosed invention. The examiner's view expressed in the paragraph bridging pages 8-9 of the answer that the "claims are silent as to any function the feedback conductor performs and thus this argument is not commensurate with the scope of the claims" is well-taken. Notwithstanding these considerations, since the structural arrangement of Kenoun's figure 3 compares with the disclosed, and even the broadly claimed version of disclosed figures 3 through 5, the discussion at column 4 and the discussion at the top half of column 5 appears to suggest to the artisan a feedback capability even though we recognize it is not explicitly taught.

Since appellants have grouped claim 17 as representative of the subject matter of claims 17, 25, 26 and 30 through 32, the rejection of these claims under 35 U.S.C. § 102 is affirmed.

Because we disagree with the examiner's views as to the subject matter of dependent claim 18, the rejection of it and

its dependent claims 19 through 21 is reversed. In considering the fact that claim 18 recites that the claimed radiator of independent claim 17 is a helical radiator, the nature of the antenna actually recited in claim 17 requires this claimed radiator, as well as a feedback conductor, as separately recited elements, which are connected together and shaped in a particular manner as recited there.

It is clear from even a brief inspection of figure 3 of Kenoun that an end of the helical portion 66 is not connected or subject to be connected to the radio circuitry of the portable communication apparatus as in claim 17. According to the examiner's analysis, and our affirmance of the rejection of claim 17, the helical portion 66 is a part of the segment 62 in Kenoun's figure 3 and is not subject to be connected to the radio circuitry of the portable communication apparatus as recited in claim 17. The mere fact that the radiator does include a helical portion 66 as expressed at the bottom of page 9 of the answer is an incomplete consideration not only of the teaching value of Kenoun but the actual requirements of appealed independent claim 17 and the physical arrangement of the elements recited there. The point at which helical portion 66 becomes non-helical is its "end," as at offset 64, and not end 52 of segment 56. Therefore,

appellants' arguments beginning at page 14 of the principal brief on appeal and the substance of the arguments at pages 3 and 4 of the reply brief are persuasive. As such, we reverse the rejection of claim 18 and its dependent claims 19 through 21.

In view of the foregoing, we have sustained the rejection of claims 17, 25, 26 and 30 through 32, but have reversed the rejection of dependent claims 18 through 21. Accordingly, the decision of the examiner is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv)(effective Sep. 13, 2004; 69 Fed. Reg. 49960 (Aug. 12, 2004); 1286 Off. Gaz. Pat. Office 21 (Sep. 7, 2004)).

AFFIRMED-IN-PART

JAMES D. THOMAS)
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